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OFFICE OF PETITIONS

In re Application of :
Ed Nolan, et al. :
Application No. 09/342,024 : **ON PETITION**
Filed: June 28, 1999 :
Attorney Docket No.: GENE1120-1 :

This is a decision on the petition under 37 CFR 1.137(b), filed November 15, 2004, to revive the above-identified application.

The petition is dismissed because it lacks the required petition fee pursuant to 37 CFR 1.17(m).

Effective October 1, 2004, the small entity fee for a petition to revive an unintentionally abandoned application was increased to \$685. It is noted that petitioner submitted \$575 and a request that the amount be combined with the \$110 submitted for a previously filed petition. There is no authorization found in the papers filed November 15, 2004 to charge any fee deficiency.

Petitioner is advised that petition fees are due upon the filing of the petition. 35 USC 42(d) permits refund of "any fee paid by mistake or any amount paid in excess of that required." Since the petition fee paid with the previously filed petition was due at the time of filing the petition and was paid by a duly authorized representative of applicant, the fee is not subject to refund and cannot be reapplied towards the payment of a new fee. This is not a "mistake" as contemplated by the statute. See 37 CFR 1.26. Unfortunately, effective December 8, 2004, the petition fee was further increased to \$750. Since any fee paid on or after December 8, 2004, must be paid at the revised amount, petitioner must now submit the petition fee deficiency of \$175.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include the \$85 petition fee deficiency and a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

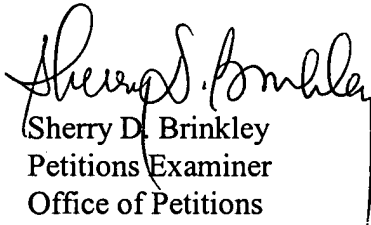
Further correspondence with respect to this matter should be addressed as follows:

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The centralized facsimile number is (703) 872-9306.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

A handwritten signature in cursive script, appearing to read "Sherry D. Brinkley", is written over a rectangular box. The signature is written in black ink.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy